



January 22, 2008

TO: Telephone and Telegraph Filers  
FROM: Marilyn H. Browne, Chief  
Bureau of Local Assessment  
COPY: Boards of Assessors  
TOPIC: **Telephone and Telegraph Return for FY2009**

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## **Filing Deadline**

On or before March 1, 2008, telephone and telegraph companies doing business in the Commonwealth are required to make a return (Form 5941) to the Commissioner of Revenue listing taxable machinery, poles, wires, underground conduits, wires and pipes located in each municipality as of January 1, 2008, pursuant to M.G.L. c. 59, §41.

On February 27, 2007 the Appellate Tax Board issued its [Findings of Fact and Report PDF](#) in the Bell Atlantic Mobile of Massachusetts Corporation, Ltd. d/b/a Verizon Wireless v. Commissioner of Revenue et al., A.T.B. Nos. C267959-C268176, C269027-028 and Board of Assessors of City of Newton v. Commissioner of Revenue and Bell Atlantic Mobile, LLC, A.T.B. No. C269569. They decided that Bell Atlantic Mobile, a wireless telecommunications carrier, was not a telephone or telegraph company subject to central valuation by the Commissioner of Revenue under M.G.L. c. 59, § 39 for fiscal year 2004 and that Bell Atlantic Mobile was not entitled to the machinery exemption available to corporate utility companies under M.G.L. c. 59, § 5, cl. 16(1)(d). A notice of appeal was filed by the company on April 27, 2007. To protect the interests of the cities and towns in the event the ATB's rulings are not upheld, we will continue to issue centralized valuations of wireless carrier's personal property without regard to the corporate utility exemption.

Until all judicial appeals processes are complete, wireless telecommunications carriers should continue to centrally file Form 5941 as issued by the Commissioner. In addition, wireless telecommunications carriers should file Form 2 (Form of List) with local boards of assessors, without regard to the exemption under G.L. c. 59, § 5, cl. 16(1). Final assessment determinations in accordance with the Commissioner's central valuations or local valuations will be made by the local board of assessors in the locality where the wireless telecommunications carrier's property is located. If there are any future changes to the valuations process, the Commissioner will announce them in a subsequent public written statement.

Any company that is submitting a Form 5941 Appendix, is filing a return for the first time, has filed in the past and has not been centrally valued, or is not sure whether it must file a central return may also need to file timely local returns of property under M.G.L. c. 59, §29, or seek

authority to file such return late, in order to protect its rights in the event the Commissioner determines that the company is not substantially a telephone/telegraph company and therefore not subject to central valuation. Any company that has taxable non-telephone property subject to local valuation must file a local return with the local boards of assessors on such property as well as Form 5941 for centrally valued telephone property.

## Important Clarifications

Please see Return - Section 3. *Taxable Personal Property Subject to Valuation by the Commissioner of Revenue*. At the end of the paragraph we have made several clarifications. They are as follows:

1. Property constructed and in service is taxable.
  - Cable without lit fiber (aka dark fiber or dark cable) is not taxable.
  - Construction work in progress (CWIP) is not taxable.
  - All emergency and backup electric generators are considered in service and taxable.
2. All cellular/mobile telecommunications service providers will be centrally valued on all telecommunications machinery.

As a reminder, all personalty that is listed as new for calendar year 2007 and all personal property that is new to a community, whether it is new, used or transferred from another community, must be noted by placing a checkmark in the New Asset column on the spreadsheet "List of Telephone and Telegraph Personal Property".

## FY2009 Central Valuation Reporting Forms

State Tax Form 5941 and State Tax Form 5941 Appendix, are available on the Internet. Personalty will be valued by the cost approach using property identification codes that mirror those of the Federal Communications Commission (FCC) and generally accepted cost indices. All returns must be complete, submitted in the prescribed format and signed by the treasurer. Current year returns will be compared with previous years' returns and you must be able to account for discrepancies.

The spreadsheet portion of the return uses drop down menus to assist you in the selection process. After entering the property cost data the spreadsheet will generate, once updated, proposed values for the upcoming year. These proposed values are subject to review, verification and modification by the Bureau of Local Assessment.

When using the spreadsheet portion of the return you should be aware of the following:

1. Data entry or upload capacity is 10,000 lines. If you need more lines please use an additional spreadsheet.
2. Installation years must be entered or uploaded as numbers. Text values will appear in red and proposed values will not be calculated.
3. Personal property descriptions must be selected from the list provided. Property identification code categories mirror those of the FCC and can be selected alphabetically or numerically.
4. Community names that are incorrect will appear in red. You must select the correct

community name from the list provided in the spreadsheet.

5. Installation years earlier than 1960 will be highlighted in green to assist in discovery of any error in data entry or upload.
6. The nature of use column has three choices and only one must be selected.

State Tax Form 5941 must be submitted electronically in the Excel format requested to [bladata@dor.state.ma.us](mailto:bladata@dor.state.ma.us) along with a printed and signed copy. The treasurer of the company, by statute, must sign the return. The owner of the property and not the lessee, user or holder, regardless of whether there is an indefeasible right of use (IRU), is responsible for reporting the personal property to the Commissioner. Returns must be filed timely. Failure to provide all required information will cause the return to be treated as an incomplete filing.

The following page contains a chart that identifies the taxable status of telephone personal property subject to central valuation based on the entity status of the company. If you have any questions contact Walter Sandoval Dusza at 617-626-4087 or John Gillet at 617-626-3605.

## Central Valuation Reporting Requirements Based on Company Entity Status

Property listed includes only machinery, poles, wires, underground conduits, wires and pipes used for providing telephone or telegraph service, which includes such property used for telephone and cable TV or telephone and Internet, but not property used solely for Cable TV or Internet.

<b>Legal Form of Owner of Property</b>	<b>Taxable Telephone Personal Property Reported to the Commissioner (Form 5941)</b>
Corporation	<ul style="list-style-type: none"> <li>• Poles and wires over private property</li> <li>• Underground conduits, wires and pipes in public or private property</li> <li>• Electric generating machinery</li> </ul>
Cellular/Mobile Telecommunications Corporation	<ul style="list-style-type: none"> <li>• Poles and wires over private property</li> <li>• Underground conduits, wires and pipes in public or private property</li> <li>• Machinery used in the conduct of the telephone and telegraph business, which includes               <ul style="list-style-type: none"> <li>○ electric generators</li> <li>○ switching equipment and</li> <li>○ routers,</li> </ul> </li> <li>• but <u>does not include</u> machinery that is               <ul style="list-style-type: none"> <li>○ stock in trade of the company (machinery sold or leased in the usual course of business) or</li> <li>○ directly used in purchasing, selling, accounting or administrative functions</li> </ul> </li> </ul>
Limited Liability Company (LLC) filing a federal return as a corporation  LLC or other entity electing to be treated federally as a disregarded entity and whose sole member is a S corporation	<ul style="list-style-type: none"> <li>• All poles, wires, underground conduits, wires and pipes situated in Massachusetts</li> <li>• Machinery used in the conduct of the telephone and telegraph business, which includes               <ul style="list-style-type: none"> <li>○ electric generators</li> <li>○ switching equipment and</li> <li>○ routers,</li> </ul> </li> <li>• but <u>does not include</u> machinery that is               <ul style="list-style-type: none"> <li>○ stock in trade of the company (machinery sold or leased in the usual course of business) or</li> <li>○ directly used in purchasing, selling, accounting or administrative functions</li> </ul> </li> </ul>
Other legal entity, including: <ul style="list-style-type: none"> <li>• Partnership</li> <li>• Association</li> <li>• Trust</li> <li>• LLC filing a federal return as a partnership or a disregarded entity (except a single member LLC or other entity whose single member is a S corporation)</li> </ul>	<ul style="list-style-type: none"> <li>• All poles, wires, underground conduits, wires and pipes situated in Massachusetts</li> <li>• All machinery, including electric generators, switching equipment and routers, used for telephone and telegraph service purposes</li> </ul>